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EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2008-0511-MWD-E TCEQ ID: RN102080637 CASE NO.: 35608
RESPONDENT NAME: Dessau Fountains Estates, L.L.C.

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input checked="" type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: Silverado WWTP, located on the north side of and adjacent to Dessau Lane, at a point approximately 1.3 miles east of Interstate Highway 35, Travis County

TYPE OF OPERATION: Wastewater treatment facility

SMALL BUSINESS: ☐ Yes ☒ No

OTHER SIGNIFICANT MATTERS: A complaint was received January 9, 2008, concerning odors coming from Harris Branch Creek. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.

COMMENTS RECEIVED: The *Texas Register* comment period expired on September 9, 2008. No comments were received.

CONTACTS AND MAILING LIST:
TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Mr. Thomas Jecha, Enforcement Division, Enforcement Team 3, MC 149, (512) 239-2576; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171
Respondent: Mr. Larry Mar, Manager, Dessau Fountains Estates, L.L.C., 16902 Bolsa Chica Street, Suite 203, Huntington Beach, California 92649
Mr. Paul R. Prentice, Authorized Agent/Vice President of Operations, Newport Pacific Capital Company, 17300 Red Hill Avenue, Suite 280, Irvine, California 92614
Respondent's Attorney: Mr. Mike Willatt, Counselor, Willatt & Flickinger, 2001 North Lamar Boulevard, Austin, Texas 78705

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: January 9, 2008</p> <p>Date of Investigation Relating to this Case: January 11, 2008</p> <p>Date of NOV/NOE Relating to this Case: March 17, 2008 (NOE)</p> <p>Background Facts: This was a complaint investigation. During the investigation, staff documented sewage sludge discharged from the Facility to Harris Branch Creek for approximately 1,000 feet downstream from where the plant discharges to the creek. Bloodworms and white algae were also present, documented and photographed.</p> <p>WATER</p> <p>Failure to prevent an unauthorized discharge to water in the state [30 TEX. ADMIN. CODE § 305.125(1), TEX. WATER CODE § 26.121 and Texas Pollutant Discharge Elimination System Permit No. WQ0012733001, Effluent Limitations and Monitoring Requirements No. 4].</p>	<p>Total Assessed: \$31,500</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$31,500</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> <p>Findings Order Justification: Human health and the environment have been exposed to pollutants which exceed levels that are protective.</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that on April 23, 2008, the Respondent completed the clean-up of the Harris Branch Creek and has also implemented changes in operations to ensure sludge is not discharged to waters of the state.</p>

Additional ID No(s): WQ0012733001



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision February 29, 2008

TCEQ

DATES	Assigned	24-Mar-2008	Screening	25-Mar-2008	EPA Due	
	PCW	25-Mar-2008				

RESPONDENT/FACILITY INFORMATION

Respondent	Dessau Fountains Estates, L.L.C.		
Reg. Ent. Ref. No.	RN102080637		
Facility/Site Region	11-Austin	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	35608	No. of Violations	1	
Docket No.	2008-0511-MWD-E	Order Type	Findings	
Media Program(s)	Water Quality	Enf. Coordinator	Libby Hogue	
Multi-Media		EC's Team	Enforcement Team 3	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History Enhancement **Subtotals 2, 3, & 7**

Notes: An enhancement is recommended for having 20 NOV's for same or similar violations, and one final enforcement order with a denial of liability within the past five years.

Culpability Enhancement **Subtotal 4**

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Reduction **Subtotal 5**

Before NOV NOV to EDRP/Settlement Offer

Extraordinary	<input type="text"/>
Ordinary	<input checked="" type="checkbox"/>
N/A	(mark with x)

Notes: The Respondent meets good faith effort to comply by completing the creek clean-up by April 23, 2008.

Total EB Amounts **Subtotal 6**
Approx. Cost of Compliance **0% Enhancement***
***Capped at the Total EB \$ Amount**

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: No deferral is recommended for Findings Orders.

PAYABLE PENALTY **\$31,500**

Screening Date 25-Mar-2008**Docket No.** 2008-0511-MWD-E**PCW****Respondent** Dessau Fountains Estates, L.L.C.

Policy Revision 2 (September 2002)

Case ID No. 35608

PCW Revision February 29, 2008

Reg. Ent. Reference No. RN102080637**Media [Statute]** Water Quality**Enf. Coordinator** Libby Hogue**Compliance History Worksheet**>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	20	100%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 120%>> **Repeat Violator (Subtotal 3)**

No

Adjustment Percentage (Subtotal 3) 0%>> **Compliance History Person Classification (Subtotal 7)**

Average Performer

Adjustment Percentage (Subtotal 7) 0%>> **Compliance History Summary****Compliance History Notes**

An enhancement is recommended for having 20 NOVs for same or similar violations, and one final enforcement order with a denial of liability within the past five years.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 120%

Screening Date 25-Mar-2008

Docket No. 2008-0511-MWD-E

PCW

Respondent Dessau Fountains Estates, L.L.C.

Policy Revision 2 (September 2002)

Case ID No. 35608

PCW Revision February 29, 2008

Reg. Ent. Reference No. RN102080637

Media [Statute] Water Quality

Enf. Coordinator Libby Hogue

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 305.125(1), Tex. Water Code § 26.121 and Texas Pollutant Discharge Elimination System Permit No. WQ0012733001 Effluent Limitations and Monitoring Requirements No. 4

Violation Description

Failed to prevent an unauthorized discharge to water in the state. Specifically, during an investigation conducted on January 11, 2008, sewage sludge discharged from the Facility was observed in the Harris Branch Creek for approximately 1,000 feet beginning where the Facility discharges to the creek. Bloodworms and white algae were also observed and photographed.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual	x		
Potential			

Percent 50%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to pollutants which exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$5,000

\$5,000

Violation Events

Number of Violation Events 3

74 Number of violation days

mark only one
with an x

daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$15,000

Three monthly events are recommended calculated from the January 11, 2008 investigation date to the March 25, 2008 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,451

Violation Final Penalty Total \$31,500

This violation Final Assessed Penalty (adjusted for limits) \$31,500

Economic Benefit Worksheet**Respondent** Dessau Fountains Estates, L.L.C.**Case ID No.** 35608**Reg. Ent. Reference No.** RN102080637**Media** Water Quality**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost No commas or \$	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal	\$101,373	11-Jan-2008	23-Apr-2008	0.3	\$1,430	n/a	\$1,430
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$1,500	11-Jan-2008	23-Apr-2008	0.3	\$21	n/a	\$21

Notes for DELAYED costs

Estimated costs to ensure that the sewage sludge did not get discharged downstream of the WWTP and the costs to remediate, or clean up the already discharged sewage and eliminate the resultant bloodworms, white algae and pollutants from the creek. Date required is the date of the investigation and the final date is the date the Respondent achieved compliance.

Avoided Costs**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs**Approx. Cost of Compliance**

\$102,873

TOTAL

\$1,451

Compliance History

Customer/Respondent/Owner-Operator:	CN601122401	Dessau Fountains Estates, L.L.C.	Classification: AVERAGE	Rating: 1.88
Regulated Entity:	RN102080637	SILVERADO WWTP	Classification: AVERAGE	Site Rating: 1.88
ID Number(s):	WASTEWATER	PERMIT	WQ0012733001	
	WASTEWATER	PERMIT	TPDES0093173	
	WASTEWATER	PERMIT	TX0093173	
	WASTEWATER LICENSING	LICENSE	WQ0012733001	
Location:	ON THE NORTH SIDE OF AND ADJACENT TO DESSAU LANE, AT A POINT APPROXIMATELY 1.3 MILES EAST OF INTERSTATE HIGHWAY 35 IN TRAVIS COUNTY, TEXAS		Rating Date: 9/1/2007	Repeat Violator: NO
TCEQ Region:	REGION 11 - AUSTIN			
Date Compliance History Prepared:	March 25, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	March 24, 2003 to March 24, 2008			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Libby Hogue	Phone:	512-239-1165	

Site Compliance History Components

- | | |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | N/A |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership occur? | N/A |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

Effective Date: 02/05/2006	ADMINORDER 2005-0509-MWD-E
Classification: Moderate	
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)	
Rqmt Prov: Effluent Limits PERMIT	
Description: Failure to comply with permit effluent limits as documented by a TCEQ record review of self-reported data.	

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	04/04/2003	(214955)
2	04/30/2003	(214957)
3	05/30/2003	(319323)
4	11/07/2003	(319325)
5	11/07/2003	(319326)
6	11/07/2003	(319327)
7	11/07/2003	(319328)
8	12/19/2003	(319324)
9	12/19/2003	(319329)
10	01/07/2004	(319330)
11	01/26/2004	(387649)
12	04/07/2004	(319321)
13	04/07/2004	(319322)
14	04/07/2004	(319331)
15	05/20/2004	(362306)
16	05/20/2004	(362307)
17	08/30/2004	(362308)

18	08/30/2004	(362309)
19	09/30/2004	(362310)
20	01/26/2005	(387645)
21	01/26/2005	(387646)
22	01/26/2005	(387647)
23	01/26/2005	(387648)
24	02/22/2005	(387643)
25	02/22/2005	(348372)
26	03/21/2005	(387644)
27	04/20/2005	(425341)
28	05/13/2005	(425342)
29	06/21/2005	(425343)
30	07/20/2005	(445924)
31	09/06/2005	(445925)
32	09/20/2005	(445926)
33	10/19/2005	(477935)
34	11/17/2005	(477936)
35	12/20/2005	(477937)
36	01/24/2006	(477938)
37	02/21/2006	(477933)
38	03/20/2006	(477934)
39	04/20/2006	(504354)
40	05/24/2006	(504355)
41	06/20/2006	(504356)
42	07/28/2006	(526686)
43	09/12/2006	(526687)
44	10/23/2006	(626242)
45	11/27/2006	(626246)
46	12/22/2006	(626244)
47	12/22/2006	(626248)
48	01/22/2007	(626250)
49	02/20/2007	(626235)
50	03/26/2007	(626236)
51	04/16/2007	(626237)
52	05/14/2007	(626238)
53	06/15/2007	(626239)
54	07/13/2007	(626240)
55	08/17/2007	(626241)
56	09/19/2007	(626243)
57	10/18/2007	(626245)
58	11/13/2007	(626247)
59	12/17/2007	(626249)
60	01/16/2008	(626251)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date	05/31/2003	(319324)		
Self Report?	YES		Classification:	Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)
Description: Failure to meet the limit for one or more permit parameter

Date	06/30/2003	(319325)		
Self Report?	YES		Classification:	Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)
Description: Failure to meet the limit for one or more permit parameter

Date	07/31/2003	(319326)		
Self Report?	YES		Classification:	Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)
Description: Failure to meet the limit for one or more permit parameter

Date	08/31/2003	(319327)		
Self Report?	YES		Classification:	Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)

Description: Failure to meet the limit for one or more permit parameter
Date 10/31/2003 (319329)

Self Report? YES Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)

Description: Failure to meet the limit for one or more permit parameter
Date 12/31/2003 (319331)

Self Report? YES Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)

Description: Failure to meet the limit for one or more permit parameter
Date 01/31/2004 (319321)

Self Report? YES Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)

Description: Failure to meet the limit for one or more permit parameter
Date 02/29/2004 (319322)

Self Report? YES Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)

Description: Failure to meet the limit for one or more permit parameter
Date 03/31/2004 (362306)

Self Report? YES Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)

Description: Failure to meet the limit for one or more permit parameter
Date 05/31/2004 (387645)

Self Report? YES Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)

Description: Failure to meet the limit for one or more permit parameter
Date 06/30/2004 (362308)

Self Report? YES Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)

Description: Failure to meet the limit for one or more permit parameter
Date 07/31/2004 (362309)

Self Report? YES Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)

Description: Failure to meet the limit for one or more permit parameter
Date 08/31/2004 (362310)

Self Report? YES Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)

Description: Failure to meet the limit for one or more permit parameter
Date 09/30/2004 (387646)

Self Report? YES Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)

Description: Failure to meet the limit for one or more permit parameter
Date 10/31/2004 (387647)

Self Report? YES Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

TWC Chapter 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter
 Date 11/30/2004 (387648)
 Self Report? YES Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter
 Date 01/03/2005 (338906)
 Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 Description: The permittee has had ammonia-nitrogen excursions in 2004 during the months of January, February, March, May, August, and September. I September there were excursions for CBOD and TSS as well.
 Date 04/30/2005 (425342)
 Self Report? YES Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter
 Date 07/31/2005 (445925)
 Self Report? YES Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter
 Date 12/31/2007 (626251)
 Self Report? YES Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
 30 TAC Chapter 305, SubChapter F 305.125(1)
 Description: Failure to meet the limit for one or more permit parameter

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
DESSAU FOUNTAINS ESTATES, L.L.C.
RN102080637**

§
§
§
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§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2008-0511-MWD-E

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Dessau Fountains Estates, L.L.C. ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent, represented by Counselor, Mike Willatt of the law firm of Willatt and Flickinger, presented this agreement to the Commission.

The Respondent understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon the Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. The Respondent owns and operates a wastewater treatment facility located on the north side of and adjacent to Dessau Lane, at a point approximately 1.3 miles east of Interstate Highway 35 in Travis County, Texas (the "Facility").

2. The Respondent has discharged sewage into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. During an investigation on January 11, 2008, TCEQ staff documented sewage sludge discharged from the Facility to Harris Branch Creek for approximately 1,000 feet downstream from where the Facility discharges to the creek. Bloodworms and white algae were also present, documented and photographed.
4. The Respondent received notice of the violations on or about March 22, 2008.
5. The Executive Director recognizes that on April 23, 2008, the Respondent completed the clean-up of the Harris Branch Creek and has also implemented changes in operations to ensure sludge is not discharged to waters of the state.

II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 3, the Respondent failed to prevent an unauthorized discharge to water in the state, in violation of 30 TEX. ADMIN. CODE § 305.125(1), TEX. WATER CODE § 26.121 and Texas Pollutant Discharge Elimination System Permit No. WQ0012733001, Effluent Limitations and Monitoring Requirements No. 4.
3. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
4. An administrative penalty in the amount of Thirty-One Thousand Five Hundred Dollars (\$31,500) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. The Respondent has paid the Thirty-One Thousand Five Hundred Dollar (\$31,500) administrative penalty.

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed an administrative penalty in the amount of Thirty-One Thousand Five Hundred Dollars (\$31,500) as set forth in Section II, Paragraph 4 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and

shall be sent with the notation "Re: Dessau Fountains Estates, L.L.C., Docket No. 2008-0511-MWD-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
3. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
4. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
5. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
6. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
7. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission


For the Executive Director

8/29/2008
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of Dessau Fountains Estates, L.L.C. I am authorized to agree to the attached Agreed Order on behalf of Dessau Fountains Estates, L.L.C., and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, Dessau Fountains Estates, L.L.C. waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.


Signature

JULY 3, 2008
Date

PAUL R. PRENTICE AUTHORIZED AGENT
Name (Printed or typed)
Authorized Representative of
Dessau Fountains Estates, L.L.C.

VICE PRESIDENT OF OPERATIONS
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

